

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4252 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DR. VASUDEV N JOKHAKHAR

Versus

STATE OF GUJARAT

Appearance:

MR BS PATEL for Petitioners

Mr. H.L. Jani, APP for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 19/12/2000

ORAL JUDGEMENT

Rule. Mr. H.L. Jani, learned APP, waives
service of rule for the respondent-State.

1. The petitioners are the Directors and office bearers of Mandvi Nagarik Co-operative Bank Limited, a banking society registered under the provisions of Gujarat Cooperative Societies Act, 1961, ("Act" for short).

2. The respondent no.3 on instructions of the District Registrar, Surat, filed Enquiry Case no.36 of 1997 against the petitioners in the Court of learned J.M.F.C., Mandvi for the offence made punishable under Sec. 147(1)(d) of the Gujarat Cooperative Societies Act, 1961 ("Act" for short). The complaint appears to have been filed on 9-6-1997 and the learned J.M.F.C., Mandvi, appears to have passed orders referring the matter to PSI, Mandvi Police Station for investigation under Sec.156(3) of the Criminal Procedure Code, 1973 ("Code" for short). The said complaint and the order passed thereon is challenged in the present petition.

3. Learned Advocate Mr. B.S. Patel appearing for the petitioners has sought to assail the impugned order by contending that criminal proceedings filed against the petitioners are filed for violation of the provisions contained in Section 71 of the said Act which is an offence u/s. 147(1)(d) of the Act; on the facts that the petitioners as office bearers and Directors of the cooperative society have invested the fund not in a manner which is required by Section 71 of the Act.

That the offence prescribed under Sec.147(1)(d) is made punishable under Sec.148(1)(d) and maximum punishment prescribed is fine which may extend to Rs.500/-. Furthermore, the inquiry and trial of the offences prescribed under the Act would be governed by Part II of the Schedule to the Code and accordingly, the offence being non cognizable, the trial Court has erred by referring the matter to PSI, Mandvi Police Station for investigation under Sec.156(3) of the Code. That the trial Court has failed to assign any reasons as to why investigation is necessary, and as such, impugned order is bad in law.

4. On scrutiny of papers, it appears that the trial Court has erred by referring the matter to PSI, Mandvi Police Station for investigation under Sec.156(3) of the Code, more particularly, in the absence of any other reasons for requirement of any investigation. That the criminal case has been instituted by private complaint and looking to the punishment prescribed for the offence alleged, the trial Court ought to have followed the procedure prescribed for summons cases or summary trial

and should have decided the matter in accordance with law.

5. On the basis of the aforesaid discussion, the impugned order passed by the learned J.M.F.C., Mandvi dated 9-6-1997 in the proceedings of Enquiry Case no.36/1997 is hereby quashed and set aside. Interim relief granted earlier vide order dated 2-8-2000 is hereby vacated and the trial Court is directed to proceed further with the matter and decide the same in accordance with law. Rule to that extent is made absolute.

(A.K.Trivedi, J.)

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